IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MAURICE EMILE,)
Plaintiff,)
V.) 3:07cv248) Electronic Filing) Judge David S. Cercone
ANTON SKERL, M.D.,) Magistrate Judge Lenihan
Defendants.	<u>}</u>

MEMORANDUM ORDER

AND NOW, this 19th day of September, 2008, after <u>de novo</u> review of the record and upon due consideration of [26] the magistrate judge's report and recommendation filed on August 18, 2008, and [28] plaintiff's objections thereto, IT IS ORDERED that [14] the Defendant's Motion to Dismiss be, and the same hereby is, granted. The report and recommendation as augmented herein is adopted as the opinion of the court.

Plaintiff's objections are without merit. As aptly demonstrated in the report and recommendation, the specific allegations advanced by plaintiff fail to rise to the requisite level of plausibility now required under Twombly and plaintiff's objections fail to provide any additional factual grounds to support the causes of action potential raised. Plaintiff's objections based on the contention that his complaint has not been reviewed in its entirety are unavailing. The record demonstrates that in fact the entirety of plaintiff's allegations have been thoroughly considered. Nevertheless, plaintiff's allegations are bereft of the factual allegations needed to support the proposition that his foot impairment can be found to rise to the level of a serious medical need and/or that Dr. Skerl's ongoing treatment of plaintiff's feet and his effort to assist plaintiff in finding a satisfactory pair of shoes can be found to rise to the level of deliberate indifference, by inference or otherwise.

Similarly, plaintiff's contention that Dr. Skerl purposefully inflicted cruel and unusual

punishment by not imposing work and/or sports restrictions fails for the same reasons. Plaintiff's own submissions demonstrate that Dr. Skerl worked with and treated plaintiff for his foot condition and there are no factual grounds raised from which to infer that not imposing such restrictions reflected the wanton infliction of pain and suffering.

s/ Davud Stewart Cercone
David Stewart Cercone
United States District Judge

cc: Honorable Lisa Pupo Lenihan U.S. Magistrate Judge

Maurice Emile HD-1551 500 East 4th Ave. Chester, PA 19013

P. Brennan Hart, Esquire Kathryn M. Kenyon, Esquire Pietragallo Gordon Alfano Bosick & Raspanti, LLP 38th Floor, One Oxford Centre 301 Grant Street Pittsburgh, PA 15219